IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3863 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARMAR NARANBHAI TOKARBHAI AND OTHERS
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR RJ OZA for Petitioners.
MR ND GOHIL, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 31/07/2006

ORAL JUDGMENT

Deletion of names from the select list is the subject matter of challenge in this petition. The petitioners herein have submitted their applications for the appointment to the post of 'clerk', in response to the

advertisement dated 5-10-1987 issued by the District Collector and Chairman District Selection Committee, Mehsana inviting applications from eligible candidates for the purpose of filling up vacancies in the cadre of 'clerk'. In the aforesaid advertisement, 30 vacancies were reserved for ex-servicemen. As stated earlier, in response to the advertisement, the petitioners applied for getting appointment in the ex-servicemen quota. The petitioners were issued call letters asking them to appear for interview, which was to be held on 24th June, 1988. According to the petitioners, they remained present before the District Selection Committee and were subjected to interview by the selection committee for selection to the post of clerk. Subsequently, the petitioners were informed that they are selected in the interview and placed at serial Nos.149, 151, 153, 154, 157, 158, 160, 165, 167, 168 and 170 respectively in the select list for the cadre of 'clerk', which was prepared in pursuance to the aforesaid advertisement. Subsequently, respondent No.2 issued appointment orders appointing the petitioners by operating the select list prepared under the Centralized Recruitment Scheme, 1970. According to the petitioners, the petitioners were also given posting orders and they also resumed their duty as 'clerk' in February, 1990. It is averred in the petition that petitioner Nos. 1 to 5 have undergone pre-service training as required under Gujarat Non Secretariat Clerks and Clerk-Typist (Training and Examination) Rules, 1970. Petitioner Nos.1 to 5 have also appeared in the post training examination as required under the said Rules. Similarly, the petitioner Nos.6 to 11 have also undergone similar training in pursuance to the order of respondent No.2. The date of appearing in such examination is different so far as petitioner Nos.1 to 5 and petitioner Nos.6 to 11 are concerned. It is pointed out that subsequently, on 1-4-1991, respondent No.2 gave appointment orders to the petitioners and other persons on the post of 'clerk', who were included in the select list of 'clerk' prepared

in the year 1987-1988 under the Centralized Recruitment Scheme Rules, 1970. The petitioners were also declared successful in post training examination held on different dates. Thereafter, the petitioners represented to give them regular appointment in the cadre of 'clerk' as they apprehended that on closure of a particular department, in which they were appointed, their services might be terminated. However, it seems that without giving any hearing to the petitioners, respondent No.2 passed an order on 25-5-1992 deleting the names of the petitioners from the select list of 'clerk', which was prepared under the Centralized Recruitment Scheme Rules, 1970 on the ground that names of the petitioners were included in the select list on the vacancies reserved for ex-servicemen, however, the petitioners were wrongly recruited under the 'ex-servicemen' quota, though they were not 'ex-servicemen' as such.

Being aggrieved by the aforesaid action of the respondents, by which names of the petitioners were deleted from the select list, the petitioners have filed present petition challenging the aforesaid action of the respondents. By filing this petition, it is prayed that aforesaid action of the respondents may be set aside and the respondents may be directed to regularize the services of the petitioners in the cadre of 'clerk' from 6-2-1990 and to grant all consequential benefits.

While admitting this matter, learned Single Judge of this Court has granted interim relief as prayed for in the petition. The effect of the interim relief is that the petitioners are still in service and that fact is not in dispute.

During the course of hearing, Mr.Oza, learned advocate for the petitioners pointed out that all these petitioners were permitted to appear even in departmental examinations known as SSD Examination,

LRQ examination and HRP examination, however, no benefit of promotion was given to the petitioners in view of the fact that they are continued in service by virtue of interim order granted by this Court.

This petition is also amended by the petitioners and a prayer for giving them promotion is also made. It is pointed out by Mr.Oza that as per the result published by the Joint Director of SPIPA, petitioner Nos. 1 to 5, 6 and 7 have been declared successful at first attempt.

On behalf of the petitioners, it is submitted by Mr.Oza that the impugned orders by which the names of the petitioners have been deleted from the select list is passed in violation of the principles of natural justice as the department has relied upon certain material and no opportunity of hearing was given to the petitioners. He also submitted that this is not a case in which the petitioners have suppressed anything and whatever material was available with the petitioners was submitted with their applications and with open eyes the petitioners were selected and were given posting orders. He further submitted that once the petitioners have been selected through regular selection process, it was not open to the department to terminate their services by relying upon some material behind the back of the petitioners by saying that they were not genuinely appointed in ex-servicemen quota. He also submitted that the department cannot say that the petitioners are not genuine 'ex-servicemen' in view of some material which department might have received subsequently from the concerned department. He also submitted that before passing the impugned orders, the respondents should have given an opportunity of hearing to the petitioners so that the petitioners could have explained the circumstances which might be against them. He also submitted that the respondents have taken the decision on the basis of some material which they have received from

other departments but at least the petitioners should have been given an opportunity to tender their explanation with regard to such material. He submitted that thus the impugned orders are passed in violation of principles of natural justice and, therefore, the impugned orders are required to be quashed and set aside. In support of his say, Mr.Oza, learned advocate for the petitioners has relied upon the decision of the Apex Court in **S.Govindaraju Vs. K.S.R.T.C. And another**, reported in **AIR 1986 SUPREME COURT 1680**. In the aforesaid case, the candidate was selected by the Selection Committee constituted under the Karnataka Road Transport Corporation (Cadre and Recruitment) Regulations (1982) and his name was included in the select list prepared for appointment as 'conductor' and his name was also included in the Badli list of workers and in pursuance thereof, he was given employment and while he was in continuous service, order of termination was issued in accordance with the regulations without giving him any opportunity of being heard. The Apex Court found that the order of termination was in violation of the principles of natural justice. It was found that candidate's services have been terminated on the ground of his being found unsuitable for appointment and as a result of which his name was deleted from the select list and he forfeited his chance for appointment. It is held that once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations, he gets a right to be considered for appointment as and when the vacancy arises. Since the order was passed without hearing the concerned employee, termination was set aside on the ground that it is contrary to the principles of natural justice.

Mr.Oza, learned advocate for the petitioners has also relied upon the decision of this Court in in **Gautam Roy V. Indian Overseas Bank** reported in **1995 (2) GLH 622**. In the aforesaid case, learned Single

Judge of this Court has held that if any inquiry for verification of the petitioner's case was carried out behind the back of the petitioner by the department and if any action regarding termination of service is taken on the basis of the report thereto, it amounts to violation of principles of natural justice. In the said case, termination order was passed on the ground of obtaining employment on incorrect caste certificate. In the said case, inquiry regarding veracity of the certificate was held behind the back of the employee and information obtained thereon was acted upon by terminating the services of the employee. In above set of facts, this Court found that no misconduct can be inferred as there is no misrepresentation at the behest of the person seeking employment.

In the affidavit-in-reply, reference is made about the service record of the petitioners, while they were in Military service. Relying upon the same, the department found that the petitioners cannot be considered as ex-servicemen as either they were relieved at their own request or their services were not found satisfactory.

It is required to be noted that the petitioners had applied by giving all details and it is not even the case of the Government that the petitioners have suppressed anything or any false record was submitted by the petitioners for getting employment.

Learned advocate for the petitioners submitted that at the time when the petitioners applied to the Collector for appointment to the post of 'clerk', all the applications were accompanied by discharge certificate issued by the concerned department, therefore, the petitioners were rightly considered as 'ex-servicemen'. He further submitted that since the petitioners were granted discharge certificate, they can legitimately be considered as 'ex-servicemen'.

On the other hand, learned AGP, Mr.N.D.Gohil submitted that if subsequently it is found that the petitioners were not genuine ex-servicemen, it was open for the department to delete their names from the select list.

I have heard learned advocates appearing for the parties. It is required to be noted that at the time of making applications, the petitioners had submitted all the material along with their applications. It is not a case where anything was suppressed or fraudulently appointment was obtained by the petitioners. Whether as per the material submitted, the petitioners could have been described as ex-servicemen or not is a different question altogether but, in my view, the department has not taken necessary care at the time of making recruitment, which were required to be taken. Under these circumstances, when the petitioners were already appointed and since each of the petitioner had resumed his duty, it was expected from the respondents to give them hearing before passing impugned order so that the petitioners could have explained the circumstances which might be against them. The respondents have taken the decision on the basis of some material which they have received from other departments but at least that material could have been shown to the petitioners, so if they had any reasonable explanation, they could have tendered the same.

It is required to be noted that in the present case, names of the petitioners have not been deleted on the allegation of misconduct etc., and when the petitioners have already been appointed and when they were serving with the department and when it is nobody's case that in a fraudulent manner employment was secured, at least, the petitioners were entitled to be heard before passing impugned orders by which their names were deleted from the select list, which may amount to

terminating their services. Since the orders in question are passed without hearing the petitioners, on the aforesaid ground impugned orders deleting the names of the petitioners from the select list are not sustainable.

Since the petitioners were required to be appointed by operating the select list and since they were already given appointment and in fact, they had also started working, subsequently, without hearing the petitioners, their names could not have been deleted from the select list, which would amount to termination of their services. As a matter of fact, once select list is already operated, subsequently, there was no question of deleting the names of the petitioners from the select list, as the services of the petitioners are required to be terminated in accordance with law, especially when the list has already been operated by giving appointments to the petitioners.

Considering the aforesaid aspect of the matter and considering the judgements cited by the learned advocate for the petitioners, impugned orders are required to be quashed on the ground that the impugned orders are passed without hearing the petitioners. Accordingly, all the impugned orders are quashed and set aside. It is clarified that this Court has not adjudicated any other points raised in this petition. It is also clarified that this Court has not decided whether the petitioners can be said to be ex-servicemen or not. Similarly, whether the petitioners were required to be given promotion or not, is also not decided by this Court. All these points are kept open. It is clarified that if any action is to be taken against the petitioners, the same can be taken in accordance with law and in accordance with the principles of natural justice.

In view of what is stated herein above, this petition is allowed only on the limited ground that the impugned orders are passed without hearing the petitioners. Rule is made absolute accordingly with no order as to costs.

(P.B.MAJMUDAR, J.)

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